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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,786	04/16/2004	Russell A. Houser		9055

7590 04/17/2007  
RUSSELL A. HOUSER  
1787 VERDITE STREET  
LIVERMORE, CA 94550

EXAMINER
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DOWE, KATHERINE MARIE

ART UNIT	PAPER NUMBER
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3734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/825,786

Applicant(s)

HOUSER ET AL.

Examiner

Katherine M. Dowe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/22/2007.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The following is a complete response to the amendment filed 1/19/2007. Claims 6-23 have been withdrawn pursuant to the Restriction Requirement of 9/8/2006. Thus, claims 1-5 are currently pending.

#### ***Specification***

2. Examiner acknowledges the amendments to the specification filed 1/19/2007. Accordingly, the objections to the specification, as stated in the 10/13/2006 Office Action, have been withdrawn.

#### ***Claim Objections***

3. Applicant's arguments with respect to the objection to claims 1, 2, and 4 have been fully considered and are persuasive. Accordingly, the objection has been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy et al. (US 6,681,773). Murphy et al. disclose a kit for treating congestive heart failure with apparatus (Fig 6) and methods provided to reconstruct an enlarged left ventricle using a shaping device (201) and a ventricular patch (Fig 6, element 602; Fig 3a, element 300) (col 3, lines 58-65). The shaping device is appropriately sized for the patient such that it has a size and shape substantially equal to the size and shape of an appropriate left ventricle (col 6, lines 30-56; col 13, lines 1-4; Fig 7, step 702). The

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patch is appropriately sized for the patient such that patch covers the opening from which akinetic tissue was excised and through which the shaping device was removed (col 13, lines 37-39; col 14, lines 2-17; Fig 7, step 726). Provided the shaping device is appropriately sized for the patient, the patch is also sized according to the shaping device as well as appropriately sized for the patient. Furthermore, Murphy et al. disclose a suture is used to close the opening (col 13, lines 40-49) and secure the patch in place (col 14, lines 18-23). The suture is sized and cut to fit the opening and thus is sized according to the shaping device and the patch and appropriately sized according to the patient.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. (US 6,681,773) as applied to claim 2 above, and further in view of Boebel et al. (US 5,454,834). Murphy et al. discloses kit for treating congestive heart failure including a shaping device, patch, and suture. However, they do not disclose details of the suture, including whether or not it has a plurality of sections with at least one section comprising superelastic or shape memory material. Boebel et al. disclose a suture that has a plurality of sections including a needle (2), thread sections (1), and preformed sections (2,3), which assume a spiral or helical shape (col 8, lines 39-46). The sections may be natural or synthetic (col 7, lines 19-32) and at least one section comprises superelastic or shape memory material, including nitinol (col 7, lines 2-5). Therefore, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to modify the suture of Murphy et al. such that it has at least one section comprising superelastic or shape memory material.

### ***Response to Arguments***

8. Applicant's arguments filed 1/19/2007 regarding claims 1 and 2 have been fully considered but they are not persuasive. Applicant argues Murphy does not select a patch according to the shaper or shaping device. Examiner respectfully traverses the applicant's remarks. Murphy discloses the shaping device provides a model upon which the ventricle can be contoured using a suture that is tightened around an opening, over which the patch is placed. Once the suture is tightened down around the opening, the shaping device is collapsed and removed, and the patch is placed around the opening to close the ventricle (col 13, ln 60 – col 14, ln 12). As the applicant argues, a sizer is used to determine the exact size of the patch, but the size of the patch is also determined *at least in part* according to the shaper selected, since a larger opening and thus a larger patch would be needed for a larger shaper. The appropriate size of the patch is determined by the size of the opening, which is formed using the appropriate shaper or shaping device.

9. Applicant's arguments filed 1/19/2007 regarding claims 4 and 5 have been fully considered but they are not persuasive. Applicant argues Murphy does not size the suture according the size of the shaping device or the size of the patch. Examiner respectfully traverses the applicant's remarks. Murphy discloses Murphy discloses the shaping device provides a model upon which the ventricle can be contoured using a

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suture that is tightened around an opening, over which the patch is placed. It is inherent the suture will be cut such that it is appropriately sized to tighten the musculature around the shaping device and thus is sized according to the shaping device.

Furthermore, Murphy discloses the patch is sized to fit into the neck of the opening that was tightened by the sutures. Thus, it is inherent the sutures are cut and sized according to the size of the patch as well.

10. Applicant's arguments filed 1/19/2007 regarding claim 3 have been fully considered but they are not persuasive. Applicant argues Murphy does not select a patch according to the shaper or shaping device, as recited in independent claim 2. Furthermore, applicant argues Boebel does not teach the above elements of claim 2. Examiner respectfully traverses the applicant's remarks. As shown above with respect to applicant's arguments for claims 1 and 2, Murphy does disclose the patch is selected according to the shaper or shaping device. Thus, since applicant does not argue the merits of claim 3, Claim 3 is rejected under 35 USC 103 (a) as being unpatentable over Murphy in view of Boebel as shown above.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine M. Dowe whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Hayes can be reached on (571)272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

kmd  
March 26, 2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER